

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

KEVIN V. BYNG,

Plaintiff,

-v-

6:22-CV-1406

BOB KELLY and BOB CONNELLY,

Defendants.

APPEARANCES:

KEVIN V. BYNG
Plaintiff, Pro Se
Utica Municipal Housing Authority
509 2nd Street, Apt 803A
Utica, NY 13501

OF COUNSEL:

MIRANDA SLONE SKLARIN
VERVENIOTIS, LLP
Attorneys for Defendants
240 Mineola Boulevard
Mineola, NY 11501

MICHAEL A. MIRANDA, ESQ.

DAVID N. HURD
United States District Judge

ORDER ON REPORT & RECOMMENDATION

On December 29, 2022, *pro se* plaintiff Kevin Byng (“plaintiff”) filed this 42 U.S.C. § 1983 action alleging that defendants violated his civil rights in connection with his tenancy in local public housing. Dkt. No. 1. Along with

his complaint, plaintiff also sought leave to proceed *in forma pauperis* (“IFP Application”). Dkt. No. 2.

On February 24, 2023, U.S. Magistrate Judge Andrew T. Baxter granted plaintiff’s IFP Application and advised by Report & Recommendation (“R&R”) that plaintiff’s: (1) § 1983 freedom-of-association claim and (2) Fair Housing Act race discrimination claim should survive *sua sponte* review and require a response from defendants. Dkt. No. 5. However, Judge Baxter recommended that plaintiff’s other claims be dismissed. *Id.*

Plaintiff has not filed objections. The time period in which to do so has expired. *See* Dkt. No. 5. Upon review for clear error, the R&R will be accepted and adopted in all respects. *See* FED. R. CIV. P. 72(b).

Therefore, it is

ORDERED that

1. The Report & Recommendation is ACCEPTED;
2. Plaintiff’s First Amendment freedom-of-association claim against defendants Kelly and Connelly SURVIVES initial review;
3. Plaintiff’s Fair Housing Act race discrimination claim against defendant Kelly SURVIVES initial review;
4. Plaintiff’s Fair Housing Act race discrimination claim against defendant Connelly is DISMISSED with leave to amend in accordance with Judge Baxter’s instructions;

5. Plaintiff's Eighth Amendment cruel and unusual punishment claim against defendants Kelly and Connelly is DISMISSED WITH PREJUDICE;
6. Plaintiff's 42 U.S.C. § 1437(d)(1)(3) claim against defendants Kelly and Connelly is DISMISSED WITH PREJUDICE;
7. Plaintiff's Fourteenth Amendment substantive due process claim against defendants Kelly and Connelly is DISMISSED WITH PREJUDICE;
8. Plaintiff's remaining claims are DISMISSED with leave to amend;
9. Plaintiff's request for a temporary injunction is DENIED;
10. Plaintiff shall have forty-five days in which to amend his complaint in accordance with this Order and Judge Baxter's instructions;
11. This matter is REFERRED to Judge Baxter for further proceedings as appropriate.

The Clerk of the Court is directed to set deadlines accordingly.

IT IS SO ORDERED.

Dated: March 20, 2023
Utica, New York.



David N. Hurd
U.S. District Judge